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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 18 August 2000, at 3 p.m.

Chairperson: Ms. MOTOC

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CLOSURE OF THE SESSION

The meeting was called to order at 3.05 p.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

(a) REVIEW OF DEVELOPMENTS CONCERNING RECOMMENDATIONS AND DECISIONS RELATING, INTER ALIA, TO:

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(e) OTHER NEW DEVELOPMENTS:

(i) ADVERSE CONSEQUENCES OF THE TRANSFER OF ARMS AND ILLICIT TRAFFICKING IN ARMS ON THE ENJOYMENT OF HUMAN RIGHTS

(ii) ARBITRARY DEPRIVATION OF NATIONALITY

(agenda item 12) (continued) (E/CN.4/Sub.2/2000/L.33-35 and L.39-41)

Draft resolution on the adverse consequences of economic sanctions (E/CN.4/Sub.2/2000/L.33)

1. Mr. ALFONSO MARTÍNEZ, reiterating his satisfaction with Mr. Bossuyt's working paper (E/CN.4/Sub.2/2000/33), said that he wished to become a sponsor of the draft resolution.

2. The CHAIRPERSON said that Ms. Zerrougui, Mr. Ogurtsov, Mr. Bengoa, Mr. Rodríguez-Cuadros, Mr. Guissé and Mr. Joinet had also become sponsors of the draft resolution.

3. The draft resolution was adopted.

Draft decision on terrorism and human rights (E/CN.4/Sub.2/2000/L.34)

4. Mrs. DAES, correcting an omission, said that, in the first preambular paragraph, the name of the Special Rapporteur, "Ms. Koufa", should be inserted before the words "to submit".

5. Mr. ALFONSO MARTÍNEZ, supported by Mr. GUISSÉ, urged the Sub-Commission to adopt the draft decision. It was vital that the Special Rapporteur be provided with all the assistance necessary for the preparation of her study, particularly in view of the importance of the issue. Such assistance did not always come up to expectations.

6. The CHAIRPERSON said that Mr. Joinet, Ms. Zerrougui, Ms. Mbonu, Mr. Ogurtsov, Mr. Oloka-Onyango, Mr. Rodríguez-Cuadros, Mr. Fan and Mr. Goonesekere had become sponsors of the draft decision.

7. The draft decision was adopted.

Draft decision on the promotion and consolidation of democracy (E/CN.4/Sub.2/2000/L.35)

8. Mr. JOINET, introducing the draft decision, said that it enjoyed the unanimous support of members and was in line with the request of the Commission on Human Rights for studies of an academic nature. The topic was a complex one; it would be a challenge for Mr. Rodríguez-Cuadros to reflect the diverging views.

9. Mr. ALFONSO MARTÍNEZ, said that the entire Sub-Commission was confident that Mr. Rodríguez-Cuadros would rise to the task. The issue was a highly topical one, and he looked forward to reading the working paper. Mr. Rodríguez-Cuadros would not require any external assistance.

10. The draft decision was adopted.

11. Mr. WEISSBRODT, noting that the draft resolutions and decisions had been numbered incorrectly, suggested that document E/CN.4/Sub.2/2000/L.41 be considered first.

12. Mr. LEBAKINE (Secretary of the Sub-Commission) said that documents E/CN.4/Sub.2/2000/L39, L.40, L.41 and L.42 had been received almost simultaneously by the Secretariat, although document E/CN.4/Sub.2/2000/L.41 had been submitted a few seconds before the others.

13. After a discussion in which Ms. HAMPSON, Mr. ALFONSO MARTÍNEZ, Mr. GUISSÉ and Mrs. WARZAZI took part, it was decided that the documents would be considered in numerical order.

Draft resolution on reservations to human rights treaties (E/CN.4/Sub.2/2000/L.39)

14. Mr. YOKOTA, introducing the draft resolution, said that the proposed study would not duplicate the work of the International Law Commission (paragraph 3). The study would have practical as well as theoretical applications.

15. Mrs. DAES said that her name had been omitted from the list of sponsors. She strongly supported the draft resolution. She was sure that Ms. Hampson, with her knowledge of the matter and her experience in the human rights field, would produce an excellent study.

16. Mr. GUISSÉ and Ms. ZERROUGUI said that they, too, wished to become sponsors of the draft resolution.

17. Mr. ALFONSO MARTÍNEZ, supported by Mr. YOKOTA, said that since substantive references had also been made to Ms. Hampson's working paper at the current session, the words "and fifty-second session" should be inserted after the words "fifty-first session" in paragraphs 3 and 7.

18. Mr. JOINET said that he wished to become a sponsor of the draft resolution.

19. The draft resolution, as orally amended and corrected, was adopted.

20. Mr. WEISSBRODT said that he had been reluctant to join as a sponsor, because he had been concerned that the Commission had requested the Sub-Commission to reconsider authorizing a full study on reservations to human rights treaties. In the past, once the Commission decided not to authorize a study, the Sub-Commission had had great difficulty in overcoming the Commission's resistance, especially when making such a proposal a second time.

21. He had finally decided to join the sponsors for two reasons. Firstly, he did not think that there was a formal duplication with the work of the International Law Commission, nor did that Commission's Special Rapporteur whom he had consulted. Secondly, the approach of the International Law Commission did not adequately reflect the special characteristics of the six major human rights treaties and several regional instruments monitored by the treaty bodies or regional courts. Moreover, human rights treaty obligations were often of a more fundamental quality than other international law pronouncements. Reservations to human rights treaties thus required more scrutiny than other reservations, and the Sub-Commission, as a human rights body, would usefully contribute to examination of the topic. He had thus, retroactively, become a sponsor of the draft resolution.

Draft resolution on State cooperation with United Nations human rights mechanisms (E/CN.4/Sub.2/2000/L.40)

22. Ms. HAMPSON, introducing the draft resolution, said that the Sub-Commission had been called upon by the Commission on Human Rights to ensure that it dealt with both prevention and implementation. The draft resolution sought to do just that. It was currently difficult to respond promptly to States' lack of cooperation with the range of United Nations human rights mechanisms. The draft resolution sought to ensure that such States would come under consideration by the Commission on Human Rights, but only if they met the criteria enumerated in paragraph 6. The draft resolution complemented Mr. Kartashkin's proposals (seventh preambular paragraph) and would afford an opportunity for encouraging States to cooperate. In no way would it interfere with the sovereign decision by a State whether or not to ratify a treaty.

23. Mr. FAN said that he was concerned that certain countries would come under the Commission's scrutiny as a result of the draft resolution, and would therefore join a consensus only if paragraph 6 was deleted. He could not go beyond supporting the idea of "encouraging" or "urging" States to cooperate.

24. Mr. ALFONSO MARTÍNEZ said that he regretted the lack of consultations on the draft resolution, since it raised a number of questions. The link between the operative part and the reference to Mr. Kartashkin's work in the preambular part required discussion. Moreover, it was not clear in paragraph 3 whether "human rights mechanisms" referred exclusively to treaty bodies or to other thematic and special mechanisms under the Commission on Human Rights. For the last three years, there had been an ongoing discussion over the presumed obligation of States to receive thematic special rapporteurs. The draft resolution implied that States not able to do so were guilty of some misdemeanour. Paragraph 6 was therefore absolutely unacceptable to him. He appealed to Ms. Hampson to consider deleting it in order to avoid the need to proceed to a vote.

25. Ms. HAMPSON said that there had been plenty of opportunity for consultations. In paragraph 3, in order to meet Mr. Alfonso Martinez's concern, she would be prepared to replace the word "mechanisms" by the words "treaty bodies". However, she could not accept the deletion of paragraph 6, without which the draft resolution would be meaningless.

26. Mr. GUISSÉ said that he had read the draft resolution for the first time that very day. He was concerned that the draft resolution would impinge on States' sovereignty. States should be encouraged - not obliged - to ratify conventions and to accept visits from special rapporteurs. More flexibility and diplomacy were required. He shared the view of Mr. Alfonso Martinez that paragraph 6 was unacceptable in its entirety. States would simply not accept it.

27. Mrs. WARZAZI said that the text did, indeed, require improvement. In the first preambular paragraph, the words "many roles" should be replaced by the word "purposes", which was more traditional. Moreover, the words "through its organs, bodies and instruments" should be replaced by the words "in the Charter and the international human rights instruments, particularly through its organs and the treaty bodies". In the third preambular paragraph, after

the words "to States", the following words should be inserted: "if they so request". In the fifth preambular paragraph, the word "need" should be replaced by the word "desirability", which would be more acceptable to States. Subtle forms of persuasion were always more effective.

28. With respect to paragraph 3, she wished to point out that reporting obligations had been the object of lengthy deliberations in the General Assembly and elsewhere. States were often overburdened with requests for reports from different bodies and were incapable of responding in a timely fashion to all of them. She thus proposed that a new paragraph be inserted requesting the Secretary-General, through the Office of the High Commissioner for Human Rights (OHCHR) in particular, to assist States requiring assistance with the preparation of their reports.

29. Mr. YIMER said that the draft resolution was troubling and unusual in that it implied that penalties were to be imposed on States for not ratifying international human rights instruments, for the late submission of reports to monitoring bodies or for not accepting a visit from a human rights mechanism. In fact, the ratification of international instruments was a matter of State sovereignty; there was no international law against the late or non-submission of periodic reports and there were no provisions for sanctions if visits did not take place. It was most disturbing, therefore, that paragraph 6 of the draft resolution seemed intended to put States in the dock even though they had broken no law.

30. States could be urged to ratify international instruments and to submit reports on time, but the Commission on Human Rights could not be required to "consider .... any State" - whatever that meant - which failed to do so. While he would be prepared to consider an amended version of the draft resolution up to and including paragraph 5, paragraph 6 was totally unacceptable and he would call for a separate vote on it if it were not deleted.

31. Ms. MBONU said that neither the Sub-Commission nor the Commission on Human Rights were courts of law in which States were to be put in the dock and tried. The Sub-Commission could appeal to States to cooperate but it could not sanction States that failed, in some cases because they lacked the necessary technical know-how, to submit periodic reports or that exercised their sovereign right not to ratify an international instrument. She, too, would vote against the draft resolution if paragraph 6 were not deleted.

32. Mr. RAMISHVILI said that he was in favour of the widest possible ratification of international instruments and visits by special rapporteurs to all countries without exception and he was against the use of reservations or declarations that restricted the scope of a human rights instrument. He was not, however, in favour of imposing imperative norms when the goal should be cooperation among States. It should not be forgotten that States ratified international instruments of their own free will. He would be in favour of a system whereby every country was methodically visited by thematic mechanisms, but visits were currently carried out only to countries that cooperated voluntarily.

33. As far as periodic reports were concerned, some States had genuine problems in preparing them and would benefit from more assistance from the OHCHR to help them to comply with their treaty obligations. Even when reports were submitted on time, the treaty bodies were not always able, for financial reasons, to deal with them promptly.

34. The draft resolution was particularly badly timed, as the Sub-Commission was embarking on a study of reservations to treaties and a seminar was to be organized for States not parties to the International Covenants on Human Rights. He could not, therefore, support the draft resolution as it stood; paragraph 6, in particular, was quite unacceptable.

35. Mr. SIK YUEN said that it was clear that no consensus would be possible if paragraph 6 was retained. He therefore wished to withdraw as a sponsor of the draft resolution and would vote against it if paragraph 6 were not deleted.

36. Ms. HAMPSON agreed that the ratification of treaties was a matter of sovereignty but said there was nothing in paragraph 6 that required States to ratify treaties. She did not agree with the suggestion that States were under no obligation to cooperate with United Nations human rights mechanisms, as they were bound under Article 55 of the Charter of the United Nations to promote and protect human rights. Nevertheless, she proposed that consideration of the draft resolution should be deferred until the next session of the Sub-Commission.

37. Mr. ALFONSO MARTÍNEZ said that if Ms. Hampson's proposal was accepted, he would wait until the next session of the Sub-Commission to comment on her interpretation of Article 55 of the Charter.

38. Mr. RODRÍGUEZ-CUADROS said that the draft resolution had been designed to make a constructive contribution to the protection of human rights and that it might be possible to reach a consensus if it were amended to take into account the valid points raised during the discussion, but the most reasonable course of action would be to accept Ms. Hampson's proposal.

39. The CHAIRPERSON said she took it that members wished to defer consideration of the draft resolution until the next session of the Sub-Commission.

40. It was so decided.

Draft resolution on continuing obligations under international human rights instruments (E/CN.4/Sub.2/2000/L.41)

41. Mr. RODRÍGUEZ-CUADROS said that the draft resolution differed from the resolution on the same subject adopted at the Sub-Commission's previous session in that specific references to countries had been avoided, in compliance with the Sub-Commission's new mandate from the Commission on Human Rights. The continuation of obligations under international human rights instruments was of paramount importance to maintaining and extending the coverage of treaty-based protection. The international system would be strengthened by greater compliance with the basic international human rights instruments. Some progress had been made on that score in the previous year, and the draft resolution was intended to build on that progress.

42. Mr. GOONESEKERE and Ms. ZERROUGUI said they wished to become sponsors of the draft resolution.

43. Mr. FAN said he had problems with the reference to Sub-Commission resolution 1999/5 in the sixth preambular paragraph, as that resolution contained references to specific countries. He had strong objections to the inclusion of references to specific countries in either resolutions or Chairperson's statements.

44. Mr. RODRÍGUEZ-CUADROS said that the sponsors could accept the deletion of that paragraph for the sake of consensus.

45. Mr. ALFONSO MARTÍNEZ suggested that, in paragraph 2, States should be encouraged to participate fully in the regional human rights systems in their respective regions only "if they have not been excluded from them".

46. Mr. RODRÍGUEZ-CUADROS said that the problem referred to by Mr. Alfonso Martínez could best be resolved by adding, in the second line of paragraph 2, the word "jurisdictional" before the word "systems".

47. The CHAIRPERSON said she took it that the Sub-Commission wished to adopt the draft resolution, as orally revised, by consensus.

48. It was so decided.

METHODS OF WORK OF THE SUB-COMMISSION (agenda item 1 (c)) (continued)

Draft decision on the composition of working groups of the Sub-Commission for 2001

49. The Sub-Commission approved, without a vote, the composition of its working groups for 2001.

CONCLUDING ITEMS (agenda item 13)

(a) CONSIDERATION OF THE FUTURE WORK OF THE SUB-COMMISSION

(b) DRAFT PROVISIONAL AGENDA FOR THE FIFTY-THIRD SESSION OF THE SUB-COMMISSION

50. The CHAIRPERSON said that the new streamlined provisional agenda, prepared by Mr. Eide, consisted of the following wording:

"At its 28th meeting on 18 August 2000, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to approve the following provisional items of the agenda for its fifty-third session:

1. Organization of work.

2. Country situations.

3. Administration of justice.

4. Economic, social and cultural rights.

5. Prevention of discrimination and protection of minorities.

6. Other issues.

7. Concluding items."

Sub-items would be added by the Bureau at the Sub-Commission's fifty-third session.

51. Mrs. WARZAZI said that "country situations" (agenda item 2) should be replaced by the full traditional title of that agenda item.

52. Mrs. DAES said that it had been her understanding that "Human rights of indigenous peoples" would be included in the provisional agenda, either before or after agenda item 5.

53. Mr. EIDE said he agreed to Mrs. Warzazi's proposal. Mrs. Daes' concerns could best be met by renaming agenda item 5 "Human rights of indigenous peoples, and prevention of discrimination and protection of minorities".

54. Mr. ALFONSO MARTÍNEZ said that "Prevention of discrimination and protection of indigenous peoples and minorities" would be more appropriate. Referring to the introductory phrase to the draft decision, he pointed out that the Sub-Commission did not "approve" the provisional agenda for its next session, but "took note" of it.

55. Mrs. DAES said she preferred the formula suggested by Mr. Eide for the inclusion of the human rights of indigenous peoples in the agenda.

56. Mr. YOKOTA said he agreed that something had to be done to curb the proliferation of agenda items and that the details of sub-items could be worked out at the Sub-Commission's next session. However, as the members would still need to prepare for the next session's discussions, he took it that most of the points that had been discussed at the current session would be brought up at the following one also.

57. Mr. EIDE said that there had not been time to discuss what sub-items should appear on the agenda for the Sub-Commission's fifty-third session. He suggested, therefore, that proposals in that regard should be submitted to the Bureau for inclusion in the annotated agenda for the next session, which would normally be available for circulation to the members in October or November 2000.

58. Mr. YOKOTA said he supported that suggestion.

59. Mrs. WARZAZI proposed that the Sub-Commission should decide to adopt the introductory paragraph on a provisional basis, on the understanding that the sub-items could be adopted or rejected at the time the agenda for the session was being adopted on the basis of the provisional agenda.

60. Mr. ALFONSO MARTÍNEZ proposed that the text should read: "At its 28th meeting, on 18 August 2000, the Sub-Commission on the Promotion and Protection of Human Rights decided, without a vote, to take note of the following draft provisional agenda for its fifty-third session, on the understanding that the agenda sub-items would be presented as part of the provisional agenda for its formal adoption at the fifty-third session".

61. It was so agreed.

62. As orally amended, the draft provisional agenda for the fifty-third session of the Sub-Commission was approved without a vote.

(c) ADOPTION OF THE REPORT ON THE FIFTY-SECOND SESSION (E/CN.4/Sub.2/2000/L.10 and L.11; E/CN.4/Sub.2/2000/Misc.2)

63. Mr. GOONESEKERE (Rapporteur) said that, because of many difficult circumstances, including a shorter session, it had not been possible for him to submit the draft report in full for the Sub-Commission's consideration. As in the past, the draft report would consist of two parts: the compilation of the 28 resolutions and 17 decisions adopted during the current session, contained in documents E/CN.4/Sub.2/2000/L.11 and addenda; and proceedings under the various agenda items, contained in documents E/CN.4/Sub.2/2000/L.10 and addenda 1-12. The summary records of the Sub-Commission's proceedings (E/CN.4/Sub.2/2000/SR.1-28) which covered the 28 meetings of the current session should be consulted for substantive matters.

64. As for the annexes to the report, document E/CN.4/Sub.2/2000/Misc.2, which the members had before them, contained the future annex II, covering the general debate. For the current report, he had decided to add a further annex, annex VIII, including a list of numbers and titles of all the resolutions and decisions adopted by the Sub-Commission.

65. Mr. EIDE said he appreciated the difficulties, including the time constraints, under which the Rapporteur had been labouring in preparing the draft report. The time constraints, indeed, were one of the reasons why the Sub-Commission's discussions on agenda item 2 had been incomplete and a number of differing views had not been synthesized. Moreover, some members felt that the presentation of the overview of the violation of human rights and fundamental freedoms examined under that agenda item was not in conformity with the Commission's reporting guidelines. He therefore proposed that, notwithstanding its decision 2000/109, the Sub-Commission should refrain from submitting an extended overview of human rights violations and should instead seek the Commission's advice on how it wished to receive the information from the Sub-Commission.

66. Mr. YIMER said that, while he appreciated Mr. Eide's concern, the Commission had already provided the Sub-Commission with clear guidelines for that purpose in paragraph 52 of decision 2000/109.

67. Mr. KARTASHKIN said that Mr. Eide's proposal had surprised him, since his own impression was that most of the members had agreed on the submission of a report on agenda item 2. Although he himself was one of those dissatisfied with the report's format, he did not see how the Sub-Commission could fail to submit it.

68. With reference to sub-item 12 (a) (iii) of the current session's agenda, he recalled that the Sub-Commission had decided, by adopting draft resolution E/CN.4/Sub.2/2000/L.18, that the question of encouragement of universal acceptance of human rights instruments and observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States not parties to United Nations human rights conventions warranted consideration as a separate agenda item at the Sub-Commission's next session.

69. Mr. JOINET said he agreed with Mr. Yimer: Mr. Eide's latest proposal was at variance with the Sub-Commission's mandate under Commission resolution 8 (XXIII) of 16 March 1967.

70. Mr. FAN said that the mandate provided by the Commission did not, as he saw it, prevent the Sub-Commission from changing the way in which it submitted its report. It would be difficult to prepare an overview solely on the basis of the summary records of a session. He hoped, therefore, that Mr. Eide's proposal could be adopted.

71. Ms. MBONU supported Mr. Eide's proposal.

72. Mr. RODRÍGUEZ-CUADROS said that Mr. Eide's proposal was reasonable and reflected the fact that it had not been possible to find a common denominator in the Sub Commission.

73. Mr. ALFONSO MARTÍNEZ paid tribute to the Rapporteur for the goodwill he had shown in addressing the thorny issues raised by agenda item 2. Mr. Eide had also shown courage and leadership in putting forward a proposal that was inconsistent with his own views on the matter but offered a way out of the impasse. He hoped that it would be adopted by consensus.

74. Mr. WEISSBRODT thanked Mr. Eide for a very wise proposal that he was pleased to support. Mr. Goonesekere had been the hardest working Rapporteur that the Sub-Commission had seen for many years.

75. Noting that the document symbol had been omitted from subparagraph (f) of the last preambular paragraph in resolution 2000/3 on the World Conference against Racism (E/CN.4/Sub.2/2000/L.11), he requested that it be inserted.

76. There were a number of errors in draft annex II to the report (E/CN.4/Sub.2/2000/Misc.2). There were some meetings at which he was mentioned as having addressed the Sub-Commission when he had not and vice versa. He asked the Secretariat to check its reference material more carefully.

77. Mrs. DAES expressed deep appreciation to the Rapporteur for his excellent work under very difficult time constraints.

78. Referring to resolution 2000/14 in document E/CN.4/Sub.2/2000/L.11/Add.1, she said that the title of the theme of the nineteenth session of the Working Group on Indigenous Populations in paragraph 17 should read "Indigenous peoples and their rights and participation".

79. Mr. YOKOTA asked whether Mr. Eide intended to retain decision 2000/105 concerning the overview of its discussions on agenda item 2 or to replace it by a new decision. He himself thought that the latter option was preferable.

80. Mr. EIDE said he proposed that the following paragraph should be added at the end of decision 2000/105:

> "At its 28th meeting, the Sub-Commission revised its decision, taking into account the limited time available to agree on the structure of the report and the fact that several members considered that such a report would not be in conformity with Commission on Human Rights decision 2000/109. The Sub-Commission therefore decided not to submit the intended report but to request the Commission's advice as to how the Sub-Commission could best inform it of its deliberations under the agenda item on violations of human rights, which is based on Commission resolution 8 (XXIII)."

81. Such a wording would compel the Commission to state whether it considered that resolution 8 (XXIII) was still valid and to offer guidance to the Sub-Commission on its future proceedings.

82. Mr. YIMER said he still maintained that the Sub-Commission needed no further guidance from the Commission. Its terms of reference were made perfectly clear in paragraph 52 of the annex to decision 2000/109. He was nevertheless prepared to adopt the new paragraph proposed by Mr. Eide.

83. Mr. KARTASHKIN said that the wording of the new paragraph implied that the Sub-Commission had been unable to agree on the structure of the overview because of the limited time available but would otherwise have submitted a report without consulting the Commission. He proposed deleting the phrase "taking into account the limited time available to agree on the structure of the report".

84. Mr. WEISSBRODT appealed to Mr. Kartashkin not to insist on his proposed amendment. The wording of the new paragraph was finely balanced and reflected many complex factors.

85. The CHAIRPERSON said she took it that the Sub-Commission wished to adopt decision 2000/105 (E/CN.4/Sub.2/2000/L.11) as amended by Mr. Eide.

86. Decision 2000/105, as orally amended, was adopted.

87. The Sub-Commission's report on its fifty-second session, as orally amended, was adopted *ad referendum*.

CLOSURE OF THE SESSION

88. After the customary exchange of courtesies, the CHAIRPERSON declared the fifty-second session of the Sub-Commission closed.

The meeting rose at 5.40 p.m.